

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

GREATER KANSAS CITY )  
LABORERS PENSION FUND, et al, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
AL MUEHLBERGER CONCRETE )  
COMPANY, LLC, )  
 )  
Defendant. )

Case No. 4:14-cv-00229-SRB

**AMENDED SCHEDULING AND TRIAL ORDER FOR BENCH TRIAL**

Pursuant to Fed. R. Civ. P. 16(b) and 26(f), and upon consideration of the parties' proposals in the matter, the following schedule is hereby established:

1. TRIAL SETTING. This case is scheduled for a bench trial, commencing at 9:00 a.m., on **February 17, 2016**, in Courtroom 7B at the United States District Courthouse in Kansas City, Missouri.
2. PRETRIAL CONFERENCE. A final pretrial conference in this case will be held at 10:30 a.m., on **January 14, 2016**, at the United States District Courthouse in Kansas City, Missouri. Lead trial counsel shall participate in this conference.
3. DISPOSITIVE MOTION DEADLINE. All dispositive motions, except those under Rule 12(h)(2) or (3), shall be filed on or before **August 10, 2015**. All dispositive motions shall have a separate section wherein each statement of fact is individually numbered so that any party opposing such motion may refer specifically to a genuine issue of material fact. Suggestions in opposition to a dispositive motion shall begin with a concise listing of material facts as to which the party contends a genuine dispute exists. All motions for summary judgment shall comply with Local Rules 7.0 and 56.1.

4. PRETRIAL CONFERENCE DOCUMENT DEADLINES. The documents listed below shall be filed prior to the pretrial conference.

- a. Motions in Limine. Motions in limine shall be filed at least ten (10) business days prior to the final pretrial conference. Responses to motions in limine shall be filed at least three (3) business days prior to the final pretrial conference. In order to ensure efficient use of trial time, the parties are encouraged to file motions in limine relating to key evidentiary issues.
- b. Stipulation of Uncontroverted Facts. At least three (3) business days prior to the final pretrial conference, the parties may file a stipulation of any uncontroverted facts.
- c. Witness List. At least ten (10) business days prior to the final pretrial conference, each party shall file and serve a list of all witnesses who may be called to testify at trial. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or impeachment.
- d. Exhibit Index. At least five (5) business days prior to the final pretrial conference, each party shall file and serve an exhibit index of all exhibits that may be offered at trial. If an exhibit is not listed by a party, that exhibit will not be admitted absent leave of Court. The exhibit index should be prepared on a form provided by the Clerk's office that can be found at <http://www.mow.uscourts.gov/forms.html#district>. Each exhibit will be designated as either "Plaintiff's" or "Defendant's," numbered with an Arabic numeral, and described following the enumeration. If an exhibit consists of more than one (1) page or part, the number of pages or parts shall be included in the description. The exhibit number must be marked on each exhibit at the time of listing. It is not necessary to include exhibits to be used only for impeachment or rebuttal purposes. After the time for filing the exhibit index has expired, no supplemental or amended index will be filed without leave of Court for good cause shown.
- e. Stipulation as to the Admissibility of Evidence. At least three (3) business days prior to the final pretrial conference, the parties shall file a stipulation as to the admissibility of evidence, listing the exhibits for which authenticity and foundation are not contested.
- f. Designation of Deposition Testimony. Fifteen (15) business days prior to the final pretrial conference, each party shall file and serve a designation, by page and line number, of any deposition testimony to be offered in evidence by that party.

- g. Objections to Designated Deposition Testimony and Counter Designation. At least ten (10) business days prior to the final pretrial conference, each party shall file and serve:
  - i. Any objections to proposed deposition testimony designated by any other party; and
  - ii. A designation, by page and line number, of any deposition testimony to be offered as counter-designation to deposition testimony designated by other parties.
- h. Objections to Counter Designations. At least seven (7) business days prior to the final pretrial conference, each party shall file and serve any objections to proposed deposition testimony offered as a counter-designation by other parties.
- i. Submission of Deposition Designations. At least seven (7) business days prior to the final pretrial conference, the Court should receive deposition designations in the following manner:
  - i. The parties are to jointly submit one mini-script copy of each designated deposition.
  - ii. Each party is to highlight the portion of the deposition they want to designate, including counter-designations.
  - iii. Each party should use a different highlight color to indicate their designations (for example, plaintiff uses yellow; defendant uses blue).
  - iv. Each party should also indicate their objections on the actual deposition by bracketing those portions in the margin of the deposition, again using a different color to indicate the portion to which each party objects.
  - v. Each party should submit to the Court a Word version document of the Objections to Deposition Designations that the party filed in CM/ECF. Send that via email to the Courtroom Deputy at [tracy\\_diefenbach@mow.uscourts.gov](mailto:tracy_diefenbach@mow.uscourts.gov).

## 5. TRIAL DOCUMENT DEADLINES AND TRIAL PROCEDURE.

- a. Trial Brief. At least five (5) business days prior to trial, counsel for each party shall file a trial brief stating the party's factual and legal contentions in the case. The trial brief should address any important evidentiary issues.
- b. Proposed Findings of Fact and Conclusions of Law. At least five (5) business days prior to trial, each party shall file proposed findings of fact and conclusions

of law. Each party shall submit its proposed findings via email in Word format to the Courtroom Deputy at [tracy\\_diefenbach@mow.uscourts.gov](mailto:tracy_diefenbach@mow.uscourts.gov).

- c. Trial Procedure. The Court may place time limits on opening statements, and direct and cross-examination of all witnesses. Counsel should be prepared to support their representations as to the length of trial.

## 6. MISCELLANEOUS.

- a. All motions for extension of time pursuant to Fed. R. Civ. P. 6(b), 31, 33, 34, or 36 should be filed at least seven (7) days before the date of the original deadline and must state:
  - i. The date when the pleading, response, or other action is/was first due;
  - ii. The number of previous extensions and the date the last extension expires;
  - iii. The cause for the requested extension, including a statement as to why the action due has not been completed in the allotted time; and
  - iv. Whether the requested extension is approved or opposed by opposing counsel (agreement by counsel of a requested extension is not binding on the Court).
- b. All motions requesting leave to depart from Local Rule 7.0(f) page limitation must state:
  - i. The number of previous requests for leave;
  - ii. The particular reason for the request for leave, including a specific statement as to why the action due cannot be completed within the allotted page limit; and
  - iii. Whether the request for leave is approved or opposed by opposing counsel (agreement by counsel of a request for leave is not binding on the Court).
- c. The parties shall submit a proposed order in conjunction with all non-dispositive motions filed. The proposed order shall include language detailing the specific relief sought and not simply state that the motion “is granted.” Such proposed orders shall be emailed in Word format to the Courtroom Deputy at [tracy\\_diefenbach@mow.uscourts.gov](mailto:tracy_diefenbach@mow.uscourts.gov).
- d. The dispositive motion date, final pretrial conference date, and trial date shall be changed only by leave of Court.

- e. Any questions about this scheduling order or the procedures to be followed when practicing in this division should be directed to the Courtroom Deputy, Tracy Diefenbach, at [tracy\\_diefenbach@mow.uscourts.gov](mailto:tracy_diefenbach@mow.uscourts.gov).

IT IS SO ORDERED.

/s/ Stephen R. Bough  
STEPHEN R. BOUGH  
UNITED STATES DISTRICT JUDGE

Dated: June 1, 2015